

HOUSE BILL No. 1617

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-23-13.

Synopsis: Mineral estates of unknown or missing owners. Establishes a procedure that allows a person that: (1) is engaged in the production or development of a mineral; and (2) owns or leases a property interest in the mineral estate adjacent to, adjoining, or contiguous to the mineral interest of an unknown or missing owner of the mineral interest; to bring an action in court that allows the person to enter into a lease to produce and develop the mineral interest of the unknown or missing owner.

Effective: Upon passage.

Sullivan, Heaton

January 22, 2015, read first time and referred to Committee on Natural Resources.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1617

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-23-13 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]:

4 **Chapter 13. Mineral Estates of Unknown or Missing Owners**

5 **Sec. 1. As used in this chapter, "adjacent mineral producer"**
6 **means a person that:**

7 (1) is engaged in the production or development of at least one

8 (1) mineral, including coal, oil, gas, or another mineral in
9 solid, liquid, or gaseous form; and

10 (2) owns or leases a property interest in:

11 (A) the mineral estate; or

12 (B) a portion of the mineral estate;

13 adjacent to, adjoining, or contiguous to the mineral interest of
14 an unknown or missing owner.

15 **Sec. 2. As used in this chapter, "mineral interest of an unknown**



or missing owner" means:

- (1) the mineral estate in land; or
- (2) any portion of the mineral estate in land;

that is owned by an unknown or missing owner of record or by operation of IC 32-23-10.

Sec. 3. (a) As used in this chapter, "unknown or missing owner" means a person:

- (1) vested of record or by operation of IC 32-23-10 with a property interest in:

- (A) a mineral estate in land; or

- (B) a portion of a mineral estate in land; and

- (2) whose identity or location cannot be determined:

- (A) from the records in the chain of title in the county in which the land is located; and

- (B) by diligent inquiry in the vicinity of the record owner's last known place of residence or location.

(b) The term includes the person's heirs and devisees and successors and assigns.

Sec. 4. An adjacent mineral producer that:

- (1) brings an action under; and
- (2) meets the requirements of;

this chapter may produce and develop all or part of a mineral interest of an unknown or missing owner under a lease entered into under this chapter.

Sec. 5. An action brought under this chapter by an adjacent mineral producer must be brought in the circuit court or superior court of the county:

- (1) in which the land that contains the mineral interest of an unknown or missing owner sought to be affected is entirely located; or

- (2) if the land is located in more than one (1) county:

- (A) the county where the largest part of the land is located;

or

- (B) if equal parts of the land are in multiple counties, in any county that contains an equal part of the land.

Sec. 6. (a) An adjacent mineral producer that brings an action under this chapter must do the following:

- (1) Name the following as respondents:

- (A) The last owners of record in the chain of title and all reasonably ascertainable heirs, devisees, successors, and assigns of the last owners of record.

- (B) If record title to the mineral interest of an unknown or



missing owner has been severed of record from ownership of the overlying surface land, the record owner of the overlying surface land.

(2) File a verified petition with the court that sets forth the following:

(A) A statement that specifies the mineral that the petitioner seeks to develop in the subject land.

(B) The petitioner's request that a trustee be appointed to execute a lease granting the petitioner the right to produce and develop from the subject mineral interest of the unknown or missing owner a mineral of the type produced by the adjacent mineral producer.

(C) The legal description of the mineral interest of the unknown or missing owner.

(D) The interest of the petitioner in the land adjacent to or adjoining the subject land.

(E) The apparent interest of each respondent in the applicable mineral sought to be produced and developed within the subject land.

(F) A verified statement that informs the court of the actions the petitioner has taken to identify and locate the unknown or missing owner or the owner's heirs, devisees, successors, and assigns.

(b) The Indiana Rules of Trial Procedure govern an action under this chapter to make an unknown or missing person a respondent. Legal service on a respondent who is unknown or missing may be made by publication.

(c) The court shall appoint a guardian ad litem for any respondent to the proceeding who is:

(1) a ward of the state or a ward to another person; or

(2) less than eighteen (18) years of age and is not represented by a parent.

(d) If it appears to the court that a person who is not in being, but, upon coming into being, is or may be entitled to any interest in the land sought to be leased, the court shall appoint a guardian ad litem to appear for and represent the interest in the proceeding and to defend the proceeding on behalf of the person not in being. A judgment or order entered by the court in a proceeding under this chapter is effective against the person not in being.

Sec. 7. (a) The court shall receive evidence and hear testimony concerning:

(1) the matters in the adjacent mineral producer's petition;



1 and

2 (2) the prevailing terms of similar mineral leases of the type
3 sought by the petitioner obtained in the vicinity of the land in
4 the petition, including the length of the lease term, bonus
5 money, delay rentals, royalty rates, and other forms of lease
6 payments.

7 (b) If the court determines that the material allegations of the
8 petition are true and that there has been compliance with the
9 required notice provisions, the court:

10 (1) shall enter an order determining the interest of each
11 respondent in the mineral interest sought to be leased; and

12 (2) may:

13 (A) declare a trust in the mineral interest of the unknown
14 or missing owner;

15 (B) appoint, without a bond, a trustee for the unknown or
16 missing owner; and

17 (C) authorize the trustee to execute a valid mineral lease:
18 (i) with the adjacent mineral producer concerning the
19 type of mineral developed by the adjacent mineral
20 producer on the mineral interest of the unknown or
21 missing owner; and

22 (ii) on terms and conditions approved by the court.

23 (c) The court's judgment appointing a trustee and authorizing
24 the execution of a lease must specify the minimum terms that may
25 be accepted by the trustee. The terms must be substantially
26 consistent with the terms of other similar mineral leases obtained
27 in the vicinity as determined by the court.

28 (d) The court shall determine a reasonable fee to be paid to the
29 trustee. The trustee's fee, including reasonable attorney's fees and
30 costs of the proceeding, shall be paid by the adjacent mineral
31 producer petitioner. Any other court costs related to the
32 proceedings under this chapter shall be paid by the petitioner.
33 However, each party shall pay its costs associated with issues
34 arising under section 8 of this chapter.

35 (e) If a trustee:

36 (1) dies or resigns; or

37 (2) refuses or is unable to act;

38 the court, upon the court's motion or the motion of the petitioner,
39 shall appoint a successor trustee.

40 Sec. 8. (a) In proceedings under this chapter, the court may do
41 the following:

42 (1) Investigate and determine questions of conflicting or



controverted titles.

(2) Remove invalid and inapplicable encumbrances from the title to the subject land.

(3) Establish and confirm the title to the subject mineral estate in land or the right to produce and develop the mineral from any of the subject land.

(b) The court may authorize the execution of a lease under this chapter before any matters under subsection (a) have been determined.

Sec. 9. (a) The trustee shall do the following:

(1) Enter into negotiations with the adjacent mineral producer petitioner.

(2) Execute a mineral lease in favor of the petitioner covering the interest of the respondents that reflects the findings and judgment of the court.

(3) Promptly prepare and file a report of the mineral lease with the court that states the terms of the lease and the payments received for the lease.

(4) Give notice of the report of the mineral lease to all parties appearing of record.

(b) The court shall review the mineral lease under subsection (a) to determine if the lease is in accordance with the court's findings and judgment. If the court approves the mineral lease, the court shall:

(1) issue an order confirming the lease; and

(2) issue an order terminating the trust.

(c) A lease created under this section continues after the termination of the trust unless the lease expires by its own terms.

Sec. 10. (a) Any payment that is owed by the adjacent mineral producer petitioner under a mineral lease executed with the trustee shall be paid by the petitioner to the clerk of the court.

(b) A person that wishes to claim the funds described in subsection (a) must file a verified claim with the court setting out the interest of the claimant and the basis for the claim. A notice of the filing of the claim shall be served on the adjacent mineral producer or the producer's successors or assigns. The court shall determine any other persons who shall receive notice of the filing of the claim.

(c) The court:

(1) shall hear evidence and determine whether the claimant is entitled to the funds and issue an order to the clerk accordingly; and



(2) may determine whether future payments should be made by the petitioner directly to the claimant.

(d) If a successful claim is not made under this section for the funds within seven (7) years from the clerk's receipt of the funds, the clerk shall distribute the funds as follows:

(1) If:

(A) record title to the mineral interest has been severed of record from ownership of the overlying surface land; and

(B) the identity and location of the record owner of the overlying surface land has been determined;

the clerk shall distribute the funds to the record owner of the overlying surface land.

(2) If:

(A) record title to the mineral interest has been severed of record from ownership of the overlying surface land; and

(B) the identity and location of the record owner of the overlying surface land has not been determined;

the clerk shall distribute the funds to the township trustee of the township in which the subject land is located. If the land is located in more than one (1) township, the distribution of funds shall be made to the township trustees based on the amount of land located in each township. The funds shall be used by the township trustee for township purposes, including cemetery maintenance.

Sec. 11. (a) If:

(1) record title to a mineral interest has been severed of record from ownership of the overlying surface land; and

(2) a successful claim for funds has not been made under section 10 of this chapter within seven (7) years from the clerk's receipt of funds under this chapter;

the record owner of the overlying surface land may file a petition with the court described in section 12 of this chapter to transfer the record title to the mineral interest to the record owner of the overlying surface land.

(b) The court shall conduct a hearing concerning a petition filed under subsection (a). If the petitioner shows and the court is satisfied that the identity or location of the unknown or missing owner still cannot be determined:

(1) from the records in the chain of title in the county in which the land is located;

(2) from the records of any court proceedings conducted under this chapter; and



(3) by diligent inquiry in the vicinity of the record owner's last known place of residence or location;

the court shall issue an order that transfers the record title to the mineral interest to the record owner of the overlying surface land.

(c) A transfer under this section is not valid and enforceable until a copy of the court order issued under subsection (b) is filed and recorded in the recorder's office of each county in which the land that contains the mineral interest is located.

Sec. 12. (a) After the entry of the initial judgment authorizing a lease under this chapter, all subsequent proceedings that concern the land and the mineral interest involved in the initial litigation, including:

(1) subsequent leasing proceedings;

(2) proceedings by the trustee requesting authority to execute and deliver additional documents pertaining to a lease; and

(3) proceedings by a claimant of lease payments paid to the clerk;

must be commenced in the same court as the proceedings for the initial lease.

(b) The acting trustee at the time of any subsequent proceedings under subsection (a) shall act as the trustee in the subsequent proceedings. The court retains continuing jurisdiction over any subsequent proceedings.

Sec. 13. (a) The lease of a mineral interest and execution of any lease under this chapter is binding concerning the interest in the mineral and the right to produce and develop the mineral owned by any respondent to the action in the same manner as if the respondent personally had signed and delivered the lease.

(b) The mineral lease is binding on the heirs, legatees, personal representatives, successors, and assigns of the respondents.

(c) A person who may have a contingent or future interest in the mineral interest of an unknown or missing owner is bound by the judgment entered in the proceedings under this chapter.

Sec. 14. This chapter shall be construed so that any lease issued under this chapter conveys marketable title.

SECTION 2. An emergency is declared for this act.

